



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/939,233

08/24/2001

Ray Franklin

019411-001410US

3401

20350

7590

06/09/2008

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER

PEZZUTO, ROBERT ERIC

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

06/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAY FRANKULIN and STAN JONES

Application 09/939,233
Technology Center 3700

Mailed: [Date of mailing]

Before DALE M. SHAW *Chief Appeals Administrator*.

SHAW, *Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL

This application was electronically received at the Board of Patent Appeals and Interferences on February 21, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

EXAMINER'S ANSWER

The Examiner's Answer mailed May 10, 2007, is defective. The appendix,

Application No. 09/939,233

Evidence Relied Upon (pg. 2) , states that “No evidence is relied upon by the examiner in the rejection of the claims under appeal.” A review of the file reveals that prior art was applied to the rejections of the claims on appeal; see the appendix, Grounds of rejection (pg. 3).

In accordance with MPEP ' 1207.02, the AEvidence Relied Upon@ (section 8) should include:

(8) *Evidence Relied Upon*. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Before further review, the Examiner must mail a PTOL-90 that will correct and amend the Evidence Relied Upon section and identify all references used to reject the claims on appeal.

CONCLUSION

Accordingly, it is

ORDERED that the application is electronically returned to

1) hold the Examiner’s Answer mailed May 10, 2007, defective;

2) issue and mail a Form PTOL-90, amending and/or correcting the
Examiner’s Answer (Evidence Relied Upon); and

Application 09/939,233

3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board
of

Patent Appeals and Interferences at 571-272-9797

DMS/gjh

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER, 8TH FLOOR
SAN FRANCISCO, CA 94111-3834